

# Exhibit A

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11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14

15 IN RE CAPACITORS ANTITRUST  
16 LITIGATION

17 THIS DOCUMENT RELATES TO THE DIRECT  
18 PURCHASER CLASS ACTION

MDL Case No. 3:17-md-02801-JD  
Case File No. 3:14-cv-03264-JD

**MOTION TO STRIKE TESTIMONY OF  
DR. LAILA HAIDER**

19 Date: November 29, 2021  
20 Time: 9:00 a.m.  
Courtroom: 11, 19th Floor  
21 Judge: Hon. James Donato  
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1 The Direct Purchaser Class (the “Class”) file this motion to strike the improper and previously  
 2 undisclosed expert testimony offered by Dr. Laila Haider and to instruct the jury that they must  
 3 disregard her testimony.

#### 4 I. INTRODUCTION

5 The Federal Rules of Civil Procedure provide that: “[i]f a party fails to provide information or  
 6 identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or  
 7 witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially  
 8 justified or is harmless.” Fed. R. Civ. P. 37(c)(1); *see also* Fed. R. Civ. P. 26(a)(2)(B)(i) (an expert  
 9 witness must disclose “a complete statement of all opinions the witness will express and the basis and  
 10 reasons for them.”). Defendants intentionally violated Rule 26 by allowing Dr. Haider to testify during  
 11 her direct examination to an economic analysis that she never previously disclosed. In other words, Dr.  
 12 Haider’s improper undisclosed testimony that her calculation of damages was \$66 million was not an  
 13 inadvertent statement made during a heated cross-examination. It was a calculated attempt to sandbag  
 14 Plaintiffs by offering an alternative damage calculation to the jury. This Court should not allow  
 15 Defendants’ blatant violation of the rules and should strike the testimony of Dr. Haider in its entirety or,  
 16 at a minimum, strike the testimony regarding her alternative damages calculation and immediately  
 17 provide a thorough curative instruction to the jury.

#### 18 II. ARGUMENT

19 Dr. Haider was retained by the Defendants to offer general criticism of the overcharge  
 20 regression analyses of Drs. McClave and Singer, as well as Dr. McClave’s customer-specific impact  
 21 regression model. Expert report of Dr. Laila Haider (February 22, 2019), ¶4. At no time did Dr. Haider  
 22 ever indicate that she would prepare an alternative damages calculation. *See* Declaration of Joseph R.  
 23 Saveri, Ex. A (excerpts of May 9, 2019 Deposition of Dr. Laila Haider) (“Haider Dep.”). This was not  
 24 in her expert report, this was not disclosed in any of her errata submissions, and this was never  
 25 disclosed during her two days of deposition testimony in which she specifically disclaimed having any  
 26 additional opinions after reviewing Dr. McClave’s and Dr. Singer’s expert reports, other than in her  
 27 written Rule 26 disclosures. In particular, during her deposition Dr. Haider was explicitly asked if she  
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1 would provide a damage analysis. She could not have provided clearer testimony regarding her  
2 testimony:

3 Q: And, in fact, you were not asked to perform your own overcharge  
4 analysis in this case, right?

5 \*\*\*

6 A: An independent analysis of my own, no, I was not asked to perform that.

7 Q: So you are not in a position to give an opinion as to what you believe  
8 were the overcharges caused by the capacitors cartel?

9 \* \* \*

10 A: I – that is not my role here. . . .

Haider Dep. at 418:2-14; *see also id.* at 375:15-24; 417:18-25.

11 At the outset of her trial testimony, Dr. Haider reaffirmed that her assignment was “to evaluate  
12 and test Dr. McClave’s methodology and conclusions” and to “evaluate Dr. Singer’s methodology.”  
13 *See* Trial Tr., Vol. 8, 1345:19-25. From that point, Dr. Haider launched into a narrative presentation  
14 only occasionally punctuated by cues from defense counsel. At one point Dr. Haider turned the concept  
15 of “question and answer” on its head, prodding defense counsel that he had “skipped over a previous  
16 slide.” Trial Tr., Vol. 8, 1370:8-10. Twice, the Court admonished defense counsel that Dr. Haider’s  
17 examination should be “less essay-like” and “not a speech.” *See* Trial Tr., Vol. 8, 1388:15-19; 1390:8-  
18 12.

19 Notwithstanding Dr. Haider’s prior disclosures, prior deposition testimony and stated  
20 assignment, during the final minutes of her narrative trial testimony, she was asked if she had “gone  
21 through the exercise of calculating what the damages would be if you just took the years in which there  
22 was a positive overcharge.” *See* Trial Tr., Vol. 8, 1383:21-24. Dr. Haider responded “Yes. I – I did look  
23 at that” and that she calculated that the damages “would account for about 66 million roughly.” *Id.* at  
24 1383:25-1384:4. Plaintiffs promptly objected that this testimony was completely outside the scope of  
25 Dr. Haider’s reports and testimony. Defendants did not offer any citation to Dr. Haider’s expert reports  
26 to support her testimony. Nor could they. This “calculation” is unambiguously outside the scope of her  
27 stated assignment and prior Rule 26 disclosures. It was never previously disclosed. The Court neither  
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sustained nor overruled Plaintiffs' objection, but instead simply stated "well, let's keep going." *Id.* at 1383:7.

The damage done by this undisclosed testimony cannot be glossed over. At a *minimum*, the failure of Defendants to disclose that Dr. Haider would offer this damages calculation deprived Plaintiffs of an opportunity to address this critique during Dr. McClave's testimony. *See Samsung Elec. Co., Ltd. v. NVIDIA Corp.*, 314 F.R.D. 190, 201 (E.D. Va. 2016) (noting that failure to make timely expert disclosures "would constitute significant prejudice").

It is imperative that the Court strike Dr. Haider's improper testimony. *See Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001) (exclusion under Rule 37(c)(1) is intended to "give[ ] teeth to [Rule 26] by forbidding the use at trial of any information required to be disclosed by Rule 26(a) that is not properly disclosed"). While a court excluding evidence under Rule 37 need not find bad faith or willfulness, the court may impose this sanction even when doing so would cause a litigant's entire cause of action or defense to be essentially precluded. *Id.* This Court should also immediately give the jury a curative instruction that is sufficient to "neutralize the harm" caused by Dr. Haider's testimony. *See United States v. Kerr*, 981 F.2d 1050, 1054 (9th Cir. 1992) ("A trial judge should be alert to deviations from proper argument and take prompt corrective action as appropriate."); *see also United States v. Barrett*, 703 F.2d 1076, 1084 n.14 (9th Cir. 1983) ("the trial court gave the jury a curative instruction immediately after [the expert witness'] improper testimony was made.").

### III. CONCLUSION

The law is clear and unambiguous, under Rule 37 (c)(1) "[e]xcluding expert evidence as a sanction for failure to disclose expert witnesses in a timely fashion is automatic and mandatory unless the party can show the violation is either justified or harmless." *Plumley v. Mockett*, 836 F. Supp. 2d 1053, 1064 (C.D. Cal. 2010) (*quoting Carson Harbor Village, Ltd. v. Unocal Corp.*, No. 96-cv-3281-MMM, 2003 WL 22038700, at \*2 (C.D.Cal. Aug. 8, 2003)). Defendants and Dr. Haider have intentionally violated the provisions of Rule 26, and their misconduct was neither justified nor harmless. As set out above, Dr. Haider's inappropriate testimony should be stricken and the jury should be given a curative instruction without delay.

Dated: December 10, 2021

Respectfully Submitted,

By: /s/ Joseph R. Saveri  
Joseph R. Saveri

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Steven N. Williams (State Bar No. 175489)  
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9  
10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 IN RE CAPACITORS ANTITRUST LITIGATION

Master File No. 3:17-md-02801-JD

Case No. 3:14-cv-03264-JD

13 THIS DOCUMENT RELATES TO THE DIRECT  
14 PURCHASER CLASS ACTIONS

**DECLARATION OF JOSEPH R. SAVERI  
IN SUPPORT OF MOTION TO STRIKE  
TESTIMONY OF DR. LAILA HAIDER**

1 I make this declaration in support of Plaintiffs' Motion to Strike Testimony of Dr. Laila Haider.  
2 The statements set forth herein of are my own first-hand knowledge, and if called upon to testify thereto  
3 I could do so competently. I make this declaration pursuant to 28 U.S.C. § 1746.

4 1. Attached hereto as Exhibit A are true and correct excerpts from the deposition of Dr. Laila  
5 Haider dated May 9, 2019.

6  
7 Dated: December 10, 2021

/s/ Joseph R. Saveri  
Joseph R. Saveri



# Exhibit A

May 09, 2019

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HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

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IN RE: CAPACITORS ANTITRUST :  
LITIGATION : Case No. 17-md-02801-JD

\_\_\_\_\_  
This document relates to:

The AASI Beneficiaries' Trust, :  
by and Through Kenneth A. Welt, :  
Liquidating Trustee v. AVX :  
Corp., et al., :  
Case No. 3:17-cv-03472 :

Avnet, Inc. v. Hitachi Chemical :  
Co., Ltd., et al. :  
Case No. 17-cv-7046-JD :

Benchmark Electronics, Inc. :  
et al. v. AVX Corp., et al. :  
Case No. 17-cv-7047-JD :

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DEPOSITION OF DR. LAILA HAIDER

VOLUME II

Washington, D.C.

May 9, 2019

Reported by:  
Misty Klapper, RMR, CRR  
Job No.: 270015

May 09, 2019

350

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

May 9, 2019

9:05 a.m.

Held at the offices of:

WINSTON & STRAWN LLP  
1700 K Street, N.W.  
Washington, D.C. 20006  
(202) 282-5000

Taken pursuant to notice, before Misty Klapper,  
Registered Professional Reporter, Certified Realtime  
Reporter, and Notary Public in and for the District of  
Columbia.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 P R O C E E D I N G S

3 Whereupon:

4 LAILA HAIDER,

5 was called for further examination, and, after  
6 being duly sworn, was further examined and  
7 further testified as follows:

8 CONTINUING EXAMINATION BY COUNSEL

9 FOR DIRECT PURCHASER PLAINTIFFS

10 BY MR. WILLIAMS:

11 Q. Good morning, Dr. Haider. Are  
12 you ready to go?

13 A. I am.

14 Q. Okay. Could you give me an  
15 estimate over the last 12 months of how much  
16 of your time at Edgeworth has been spent on  
17 either Lithium batteries, Packaged Seafood or  
18 this case?

19 MR. DAL SANTO: Object to form.

20 THE WITNESS: Over the last 12  
21 months. I'll take a second to try to give you  
22 an estimate.

23 BY MR. WILLIAMS:

24 Q. If you don't, that's too long to  
25 remember something like that. Tell me a major

1           HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY  
2           correct, not incorrect. So my question,  
3           again, is:

4                     Can you explain to us how it  
5           came to be that the only antitrust cases you  
6           have ever appeared as an expert in involved  
7           admitted felons?

8                     MR. DAL SANTO: Object to form.

9                     THE WITNESS: I don't have an  
10          answer in terms of how it came to be. I was  
11          contacted to -- to provide expert work and  
12          expert testimony, and -- and that's why I'm  
13          here today.

14                    BY MR. WILLIAMS:

15                    Q.     Do you have any sense of the  
16                    magnitude of exposure that the defendants in  
17                    this case face if they're found liable?

18                    MR. DAL SANTO: Object to form.

19                    THE WITNESS: Obviously, I've  
20                    looked at the experts' reports and there are  
21                    damages figures included in them. I would  
22                    need to look back at them to see what they  
23                    are. They're the reports from the DAP expert  
24                    and the DPP expert.

1           HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY  
2           and aluminum capacitor sales. I don't have  
3           any place to point to to -- what certain  
4           capacitors means in the plea agreements.

5                       BY MR. TURKEN:

6                       Q.       Okay. So nowhere in your report  
7                       do you identify any capacitors that you  
8                       believe were not part of the guilty plea,  
9                       correct?

10                      MR. VAN DER WEELE: Object to  
11                      form.

12                      THE WITNESS: That was not my  
13                      role. My role here is as explicitly stated in  
14                      paragraph 4. So I do not identify based on  
15                      some affirmative analysis what those  
16                      capacitors are.

17                      BY MR. TURKEN:

18                      Q.       Now, you also said yesterday on  
19                      a number of occasions and again this morning  
20                      that you did not put forward your own model in  
21                      this case, right?

22                      A.       That's correct. Again, it was  
23                      not my role to put forward my own model. I  
24                      was asked to assess the methodologies that  
25                      were put forward.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 Q. And, in fact, you were not asked  
3 to perform your own overcharge analysis in  
4 this case, right?

5 A. An independent analysis of my  
6 own, no, I was not asked to perform that.

7 Q. So you are not in a position to  
8 give an opinion as to what you believe were  
9 the overcharges caused by the capacitors  
10 cartel?

11 MR. VAN DER WEELE: Object to  
12 form.

13 THE WITNESS: I -- that is not  
14 my role here. It's explicitly described in  
15 paragraph 4. I'm assessing the methodologies  
16 that are put forward and whether they're  
17 capable of establishing economic injury and  
18 damages.

19 BY MR. TURKEN:

20 Q. And in the same vein, nowhere in  
21 your report do you say that the capacitors'  
22 cartel, as a matter of fact or in your  
23 professional opinion, did not cause an  
24 overcharge; isn't that right?

25 MR. VAN DER WEELE: Object to

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CERTIFICATE OF DEPONENT

I, Laila Haider, do hereby certify that I  
have read the foregoing pages, 10 through 594,  
Volumes I and II inclusive, which contain a correct  
transcript of the answers given by me to the  
questions propounded to me herein, except for  
changes, if any, duly noted on the enclosed errata  
sheet.

\_\_\_\_\_  
WITNESS

Sworn and subscribed to before me this \_\_\_\_  
day of \_\_\_\_\_, 2019.

My commission expires:

Notary Public:



May 09, 2019

596

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 CASE: In Re: Capacitors Antitrust Litigation  
3 DEPOSITION OF: Laila Haider, Volumes I and II  
4 TAKEN: May 8, 2019 and May 9, 2019

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PAGE	LINE	ERROR	CORRECTION	REASON
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Witness

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

CERTIFICATE OF NOTARY

I, MISTY KLAPPER, the officer  
before whom the foregoing deposition was  
taken, do hereby certify that the witness  
whose testimony appears in the foregoing  
deposition was duly sworn by me; that the  
testimony of said witness was taken by me in  
shorthand and thereafter reduced to  
typewriting by me; that said deposition is a  
true record of the testimony given by said  
witness; that I am neither counsel for,  
related to, nor employed by any of the parties  
to the action in which this deposition was  
taken; and, further, that I am not a relative  
or employee of any attorney or counsel  
employed by the parties hereto, nor  
financially or otherwise interested in the  
outcome of this action.



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Misty Klapper  
Notary Public in and for  
the District of Columbia